

Approved as Submitted: May 7, 2003

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR REDEVELOPMENT
AND SPECIAL CITY COUNCIL MEETING
MINUTES – APRIL 23, 2003**

CALL TO ORDER

Chairperson/Mayor Kennedy called the meeting to order at 4:00 p.m.

ROLL CALL ATTENDANCE

Present: Agency/Council Members Carr, Chang, Sellers, Tate and Chairperson/Mayor Kennedy.

DECLARATION OF POSTING OF AGENDA

Agency Secretary/City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

Redevelopment Agency Action

1. WORKSHOP FOR SANTA CLARA COUNTY'S COURTHOUSE PROJECT

Director of Business Assistance and Housing Services Toy presented the staff report.

Mallary Cusenberry addressed the design changes made since the last Redevelopment Agency meeting. He noted that a landscaped pedestrian path does not cross drive aisles. A secondary pedestrian landscape route is proposed from the buildings leading to a trail along side the retention area on the west side, along the railroad tracks. He stated that there is a full pedestrian route that includes Butterfield and three primary north/south accesses and two primary east/west accesses that would move through the site. He addressed the recommendation that the frontage road access along Butterfield. He felt that this was a good suggestion but that from a site planning stand point would result in the loss of parking and would result in the inability to meet parking requirements. He studied and presented the inclusion of protruding bays along the Butterfield elevations to the committee. There was a sense that it would diminish the architectural feel of the courthouse. He informed the Council that the County/design team looked closely at flipping the site plan, moving the two buildings to opposite sites per Council discussion, indicating that there were a few concerns raised with this design alternative:

- Important to have a symbolic focus of the campus on the corner intersection as opposed to a mid block condition
- Flipping buildings would result in a two story component of the building being close to the residential neighborhood. It was felt that the higher portions of the buildings were being placed directly against the residential area, stepping down the buildings away from the neighborhood as opposed to the current approach where more activity/attention is given to the corner, stepping the project down toward the single story building adjacent to the residential neighborhood

- Flipping building would create significant impacts on the schedule for the project, including additional costs
- Would result in operational concerns
- Flipping building would not allow access from one point.

Alicia Flynn addressed the parking needs as addressed in the Environmental Impact Report (EIR), indicating that there was sufficient parking at the opening of the facility and that an additional 50 parking spaces would be needed by the year 2020. Therefore, space is being reserved to accommodate the additional parking required for the facility. She also addressed drainage and retention needs, indicating that they did not want to pave more than they had to.

Agency Member Sellers said that in terms of flow, he felt the pathways around the edge of the project would increase access to the downtown area. However, he felt that it was human nature for individuals to walk through the parking lot. He felt that a semi path in the middle of the parking lot would help address this issue.

Mr. Cusenberry indicated that the design team looked at a diagonal path through the parking lot but that it would not be feasible because it would result in loss of parking spaces.

Chairman Kennedy inquired if there was a way to add a mid parking lot, east/west pedestrian walkway.

Mr. Cusenberry responded that the design team can take a look into this suggestion but that required parking spaces would need to be taken into consideration and yet meet setback requirements.

Ms. Flynn indicated that should the parcel to the north be purchased, a walkway pedestrian connection could be made to the property to the north.

Chairman Kennedy recommended that the pedestrian connection be considered as a possible alternative.

Agency Member Tate stated that he did not like the “big box” appearance of the buildings.

Vice-chair Chang inquired whether the screening could be designed differently as she felt that the inclusion of the screen wall elongates the design.

Mr. Cusenberry responded that the screen wall could be stepped down, the translucent elements could be provided, and landscaping incorporated. He indicated that the screen area affords flexibility.

Chairman Kennedy inquired as to the final colors.

Mr. Cusenberry responded that decisions on the colors have not been made to date. He said that it is the goal to have at least three color schemes that are distinctively different.

Agency Member Sellers inquired whether any thought has been given to varying the texture or colors of the wall panels.

Mr. Cusenberry said that consideration is being given to varying the texture between a rough face stone and a home stone in order to make a distinction in the base/surface treatment of the panels. He supports the idea of the use of a colonnade to provide a vertical variation in the design.

Chairman Kennedy said that inclusion of more earth tone colors would give the building a feel of Morgan Hill, noting that the design depicts black and white colors and gives a negative impression. The use of a beige/tan color would be more attractive.

Mr. Cusenberry said that the color scheme presented is one of the options being considered.

Chairman Kennedy stated his appreciation with the fact that the design team opened the design. However, he expressed concern with the view of the big massive corner. He inquired whether the design could be stepped back in order to open up the perspective. He stated that the Council specifically requested that the buildings not look like a block or have a massive appearance.

Mr. Cusenberry said that the design team would study this concern.

Project Manager Dumas stated that he liked the use of the horizontal elements and recommended that they be used to create shadows and deepness within the wall.

Agency Member Sellers felt that one place the County would like the design to state that it is a courthouse is in the wall that would bear the seal.

Mr. Cusenberry said that the design has two strong court gestures that need to be personified. It was the idea to have a portion of the building designed to be elegant and sample in its treatment. There was a concern about articulating the design too much that the portion of the building may be perceived as an entryway. There was also concern that too much would be taking place in one place. He informed the Council that he would generate a computer model so that the Council can see what would be viewed from Dunne and Butterfield. He said that he tried to create an interior design that depicts a courtyard. He indicated that a walkway between the building and courtyard is not feasible because of security reasons.

Chairman Kennedy stated that he was trying to find a way to break up the long continuous wall, noting that you would have to walk approximately 600 feet from the building to the end of the courtyard.

Mr. Cusenberry said that pedestrians would be coming primarily from the intersection of Diana/Butterfield and from the parking lot. He said that there is no direct way to access the site from the residential neighborhood through the sound wall. He said that there are options for accessing the courthouse facility from the Caltrans station and the downtown area.

Agency Member Tate noted that an element being used on the corner gives the appearance of a guard tower.

Mr. Cusenberry indicated that the tower elements were being used to depict primary entrances to the building and to help individuals find their way along the campus.

Ms. Flynn indicated that perhaps some of these elements could be lowered.

Chairman Kennedy inquired whether the northern portion of the court yard design could be stepped up versus the proposed continuity in design. He felt that the design gives a boxy appearance, was massive, and that it was an over kill.

Director of Community Development Bischoff appreciated the efforts of the architect to try and address the concerns raised at the last meeting, and that they have done a lot to address a number of the concerns. He felt that it was important to provide a direct line of access to the facility. He also felt that the secondary access was nicely designed but that it does not encourage individuals to walk to the downtown. He understood the comments made by Ms. Flynn regarding the parking. However, he felt that there were other ways to address the pedestrian pathway issue. He noted that the number of trees being proposed in the parking area exceed the City's requirements. Instead of having a bay of trees, the design could incorporate a tree in the middle that would allow additional parking spaces. This would allow the design team to incorporate a direct line of access. Previous comments addressed the concern of the massiveness of the building and the need to break up the vertical and horizontal elements. Increasing the height of the main lobby areas and providing a pedestrian scale canopy along Butterfield helps but was not sure whether these were enough. He felt that the justice building is a boxy looking building and is not an image of Morgan Hill. He was not sure the changes made were sufficient to meet the concerns raised previously.

Mr. Cusenberry said that he worked hard to incorporate a sidewalk along both sides of the drive aisle but that a parking stall was an issue. He stated that one of the goals of the project is to provide a feel of an orchard, carrying forward Morgan Hill's agricultural past. He said that minimizing the number of trees would decrease the feel of the orchard and would increase the temperature in the parking lot significantly.

Agency Member Carr appreciated the significant number of trees being proposed. However, he recommended that the design retain the trees proposed outside and limit the number of trees proposed inside in order to create the walkway.

Chairman Kennedy requested that the County design team work with City staff on the walkway issue.

Chairman Tate said that he likes the trees as presented. He would prefer to have the walking pathway identified through signage and retain the orchard feel.

Mr. Toy addressed the possible purchase of the parcel to the north to be used for a fire station and the need to incorporate access to this site.

Mr. Cusenberry expressed concern that the fire station would affect the EIR that has been completed for this project.

Ms. Flynn said that she has been advised that the fire station site is not a part of this parcel and would not meet the requirements of the EIR. She said that the rows of trees are a bio source and part of the storm water treatment/capture.

Chairman Kennedy felt that there is a way to handle this issue without eliminating any trees. He felt that there were issues of overriding concerns to deal with mitigation measures.

Action: *It was the consensus of the Agency Board that there was **general support** of extending the walkway without the loss of trees, making the walkway the main visual path. The justice building needs to pick up Morgan Hill's character.*

Ms. Flynn felt that one of the comments that everyone seems to agree upon is the option of moving the walkway located on the left side to the middle of the site as an alternative.

Chairman Kennedy stated that the Agency Board appreciates the progress being made but felt that more work needs to be done.

Council Member Carr felt that the design team has produced great work and addressed a lot of the issues raised by the Agency Board.

Agency Member Tate stated that he liked the site plan and the location of the buildings. However, he did not like the design of the buildings themselves. He felt that if the courthouse gets more of a Morgan Hill treatment, it would make the site more appealing.

City Council Action

OTHER BUSINESS:

2. LIBRARY COMMISSION AND PARKS & RECREATION COMMISSION INTERVIEWS

The City Council conducted interviews to fill vacancies on the Library Commission as follows: Kathleen Keeshen, George Nale, Kathleen Stanaway. The City Council also conducted interviews to fill vacancies on the Parks & Recreation Commission as follows: Jesus Ambriz, Rick Page, Marlon Spencer, and Craig van Keulen.

Action: *The City Council **Continued** interviews of applicants for positions on the Library Commission and the Parks and Recreation Commission to April 30, 2003.*

Redevelopment Agency and City Council Action

CLOSED SESSIONS:

City Attorney/Agency Counsel Leichter announced the below listed closed session items:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant Exposure/Initiation of Litigation

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 2

2.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Legal Authority: Government Code Section 54965.9(a)

Case Name: Santa Clara Valley Audubon Society v. City of Morgan Hill

Case No.: Santa Clara County Superior Court, No. CV 815655

Attendees: City Council, City Manager, City Attorney

3.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority: Government Code section 54956.9(a)

Case Name: Allivato v. City of Morgan Hill et al.

Case Number: Santa Clara County Superior CV 810111

Attendees: City Attorney, City Manager

OPPORTUNITY FOR PUBLIC COMMENT

Chairperson/Mayor Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Chairperson/Mayor Kennedy adjourned the meeting to Closed Session at 6:02 p.m.

RECONVENE

Chairperson/Mayor Kennedy reconvened the meeting at 7:03 p.m.

CLOSED SESSION ANNOUNCEMENT

Agency Counsel/City Attorney Leichter announced that there was no reportable action taken in closed session.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Chairperson/Mayor Kennedy, Ryan Shepherd led the Pledge of Allegiance.

RECOGNITIONS

Chairperson/Mayor Kennedy deferred the presentation of Certificates of Recognition to Beth Ann Gardner, Gerald Kinkade, and James Rothert, outgoing members of the Bicycle & Trails Advisory Committee, to a future Council meeting date.

PROCLAMATIONS

Chairperson/Mayor Kennedy presented a proclamation to Volunteer Coordinator Lengsfeld proclaiming April 27 through May 3, 2003 as *National Volunteer Week*.

Chairperson/Mayor Kennedy presented a proclamation to Betty Garcia, of the Child Abuse Council of Santa Clara County regarding *Child Abuse Awareness Month*.

PRESENTATIONS

Assistant to the City Manager Eulo, announced the winners of the Poster Contest. as follows, K-3: 1st Marissa van Rhijn; 2nd place - Amy Liu 3rd place - Allen Engle; Honorable mentions – Brittney Hall and Emily Hovanessian, Clara Kennedy, Steven Marquez, Nicholas Hamilton; 4-7: 1st place Meredith Diddens; 2nd place Zachary Thomas; 3rd place – Allee Feber; Honorable Mention – Thomas Lau, Moira Scanlon, Alyssa Barsanti, Petra Halbur; 7-9 1st Matice McClellen, 2nd place – Erica Margatich, 3rd place – Stefania Mercante, Honorable Mention – Erin Lawless, Carissa Pausano, Katie Rule, 10-12 1st Place – Ian Webb, and 2nd place – Ryan Shepherd.

Assistant to the City Manager Eulo informed the City Council that Julie Osborne, South Valley Disposal and Recycling, was in attendance to present the Home and Business Recyclers of the Year Awards.

Julie Osborne recognized the 2002 Business Recycler of the Year: Keith and Divana Meyer - Nob Hill Wash and Dry; and the 2002 Residential Recycle award is the Fosbaugh Family.

PRESENTATION

Mr. Eulo indicated that the City has been participating in the Green Business Program for approximately six years. Recently, Mayor Pro Tempore Chang requested that staff agendaize discussion of the potential for the City to become a green city. He stated that there is an item at the end of the agenda to discuss this issue. However, he indicated that Carl Berg from the Santa Clara County Green Business Program was in attendance to make a presentation about the Countywide Green Business Program.

Ms. Berg presented a power point presentation about the County's Green Business Program, indicating that it is the goal of the program to encourage the use of environmentally sound business practices through assistance and recognition.

Mayor Kennedy inquired how much staff time would be required for a City the size of Morgan Hill to participate in the Countywide Green Business Program. Ms. Berg responded that Mr. Eulo would devote some time for strategic planning purposes and that there would be other department staff

members who would also contribute time. She said that Mr. Eulo would have a better sense about how much staff time would be needed to dedicate to this program.

CITY COUNCIL SUB-COMMITTEE REPORT

Council Member Carr stated that the City's Legislative Subcommittee met last week and reviewed 16 legislative proposals. The 16 legislative proposals are outlined in a memo prepared by Assistant to the City Manager Eulo. Of the 16 legislative proposals, he indicated that the Legislative Subcommittee took positions on 11. The Legislative Subcommittee chose not to take positions on the others or referred them back to staff for further information. He stated that the legislative proposals came from individual Council Members, as staff/departments have suggestions, and Mayor Pro Tempore Chang who has brought a lot of them that will be coming before the County Cities Association, Legislative Action Committee. He noted that one of the legislative proposals came from Mayor Kennedy based on a request for support of the development of a National Housing Trust Fund. He stated that the Legislative Subcommittee is recommending support of the National Housing Trust Fund.

OTHER REPORTS

None.

CITY MANAGER REPORT

City Manager Tewes announced that Saturday, April 26, 2003 at 8:00 a.m. the annual City Beautification Day would commence at City Hall. He stated that volunteers are still needed for this event. He reported good news on the perchlorate front. He said that the Council has directed that staff conduct monthly tests of the 13 production wells. He stated that perchlorate is a chemical recently discovered in the ground water in south county, attributable to the use of perchlorate in a manufacturing process by Olin Corporation at a site in Morgan Hill located at Tennant and Railroad Avenues. He said that over the past couple of months, staff has reported low levels of detection in some of the City's wells intermittently. This month, of the 13 production wells, all but one has come back as none detect. The one well is located on Condit Road and is currently off line. It received a reading of 5 parts per billion (ppb) and that the City is required to obtain a confirming sample under state regulations. If water is found to be over 4 ppb, agencies are required to take a second sample and that the average would establish the action level. If the sample is at 4 ppb, the City would be required to notify the City Council and the public if it is the decision of the City to deliver water containing that level of contaminate. He stated that the City has gone beyond this and has taken this well and other wells off line and that they will remain off line until the situation clarifies itself. Under the current regulations, the City is not required to take the wells off line until they reach 40 ppb, noting that the City has had no readings coming close to this level. He said that there are a number of sources to obtain information about perchlorate such as the Valley Water District's website. Another agency that has the statutory authority and responsibility to perform the clean up is the Regional Water Quality Control Board. He indicated that the Board will be hosting a community meeting at Gavilan College on Saturday, May 3 at 10 a.m. at which time the Board will bring a variety of experts on several topics, including cleanup techniques. Public health officials will be in attendance to address the health affects of perchlorate.

PUBLIC COMMENT

Marby Lee, 960 Oak Park Drive, requested Council support in bringing Whole Foods and Trader Joes into Morgan Hill, indicating that a letter writing campaign is underway by a group of citizens hoping to bring them into Morgan Hill. She requested that Council welcome Whole Foods and Trader Joes with open arms, trying to forge a successful partnership for opening a store here.

Cindy Gobin concurred that good alternative grocery stores are a great idea for Morgan Hill and that the City should advocate more green businesses like these.

Mayor Kennedy stated that he would make a personal commitment to help with this effort, working with City staff.

Director of Business Assistance and Housing Services Toy stated that on an annual basis, staff contracts these types of businesses. In general these types of businesses are interested in Morgan Hill but that they are not in an expansion mode or the City does not have the mature market that they are looking for. He felt that a letter campaign is great and could only help. This effort may encourage these businesses to reconsider the matter. He pointed out that the Chamber of Commerce has also contemplated undertaking a letter campaign as well. He said that it might be helpful to coordinate this effort with the Chamber of Commerce in order to make it highly successful.

Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Agency Member Tate and seconded by Agency Member Sellers, the Agency Board unanimously (5-0) **Approved** Consent Calendar Items 3 - 5 as follows:*

3. **MARCH 2003 FINANCE AND INVESTMENT REPORT**

Action: ***Accepted** and **Filed** Report.*

4. **NOLL & TAM ARCHITECTS ADDITIONAL PREPARATION OF CYCLE I LIBRARY BOND ACT OF 2000 GRANT APPLICATION SUBMITTED JUNE 13, 2002**

Action: ***Authorized** Amendment of Contract Agreement with Noll & Tam Architects to Provide Additional Services in the Preparation of the Cycle I Library Bond Act of 2000 Grant Application, not to exceed \$20,000.*

5. **REQUEST FOR STATEMENTS OF INTEREST FOR THE POLICE FACILITY (17605 MONTEREY ROAD)**

Action: ***Authorized** Staff to Issue a Request for "Statements of Interest" (SOI) for the Sale or Lease of the Current Police Facility, Located at 17605 Monterey Road.*

City Council Action

CONSENT CALENDAR:

Council Members Carr and Sellers requested that item 10 be removed from the Consent Calendar.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 6 - 9 as follows:*

6. **AMENDMENT TO CONSULTANT AGREEMENT WITH CONSOLIDATED CM**

Action: ***Authorized** the City Manager to Execute a Second Amendment to the Consultant Agreement with Consolidated CM for the Community Center Project, Subject to City Attorney Approval.*

7. **RECYCLING GRANT**

Action: ***Adopted** Resolution No. 5665, Authorizing the City Manager to Request Funding.*

8. **APPLICATION FOR FEDERAL LAND AND WATER CONSERVATION FUND GRANT-IN-AID PROGRAM**

Action: *1) **Approved** the Filing of an Application for the Land and Water Conservation Fund Grant-In-Aid Program; 2) **Certified** that 50% Matching Funds are Available through CDBG Funding; 3) **Certified** that the Galvan Park Improvements Project is Compatible with the City's Land Use Plans; 4) **Adopted** Resolution No. 5666, Approving Application; and 5) **Appointed** J. Edward Tewes, City Manager, as Agent of the City to Conduct All Negotiations and Execute and Submit all Documents; Including, but Not Limited To, Applications, Agreements, and Statements Necessary to Complete the Project.*

9. **AMENDMENT TO CONTRACT AGREEMENT WITH SPORTS MANAGEMENT GROUP (SMG)**

Action: ***Authorized** Amendment of the Contract Agreement with the Sports Management Group for Operational Planning, Policies and Procedures for the Community and Cultural Center and the Community Playhouse, as well as Operator and Master Plan Services for the Indoor Community Recreation Center, not to exceed \$21,250.*

10. **LIBRARY COMMISSION RECOMMENDATION TO APPROPRIATE FUNDS TO OPEN LIBRARY ON SUNDAYS**

Council Member Sellers said that earlier this evening, in the course of the Library Commission discussion, there was a strong interest in Sunday library hours. He noted that Morgan Hill is one of only two cities in Santa Clara County that does not currently offer Sunday library hours. He felt that the need was as acute in Morgan Hill as it was anywhere else. He was pleased to see that the City is considering Sunday hours even though this is a very difficult budget year, noting that this is a relatively minor budget addition. He felt that the Library Commission would be interested in helping further offset the

cost by looking at private and other funding sources.

Council Member Carr stated that he was supportive of expanding the weekend library hours. He assumed that within the Library Commission's recommendation to the City Council that they discussed all of the alternatives on how to get the library facility opened on Sundays. He inquired whether the only alternative that was considered by the Commission was City funding for the Sunday hours.

Recreation and Community Services Manager Spier indicated that the Library Commission took a look at alternatives, including the Friends of the Morgan Hill Library conducting a fundraising campaign. There was a lot of discussion about altering hours; perhaps closing the library on a Monday or Tuesday in order to open up on a Sunday. Another alternative would be to use staff on hand and spread out the hours over the week. It appears that all the alternatives had more negatives that were associated with them. One of the biggest issues about switching hours throughout the week is that library staff felt that they were so established with the days of the week that in order to provide enough coverage on Sunday, it would limit their ability to service their patrons during the week. There is sick coverage and union issues involved. Therefore, the Library was not able to add hours and subtract them from another day.

Council Member Carr was pleased to hear that a range of alternatives were reviewed. He expressed concern that a \$78,000 appropriation, in a difficult budget year, is being recommended without benefit of Council discussion of alternatives. He noted that the recommended action is to receive the recommendation so that it is considered as part of the budget process. He did not want to overlook the fact that this is not the only way to get Sunday hours.

Council Member Tate said that the Library Commission is still looking at other revenue sources such as the creation of their own foundation or becoming part of the Morgan Hill Community Foundation as well as other options. The Library Commission is looking at the Friends of the Saratoga Library who raised \$¾ million to furnish their new library. He said that the Library Commission felt that it was important to be on record with the Council that this is something the community needs and that they would support it every way they can, looking at alternatives.

Council Member Sellers suggested that the Council challenge the Library Commission at the next meeting to come up with what they believe they can reasonably put together in the community. This will give the Council some sense when it goes through budget deliberations what the budgetary needs will be or will there be matching funds.

Council Member Carr suggested that the Council challenge the Library Commission to take the request for additional hours to the County Board of Supervisors as the operation of the County library system is the responsibility of the County as part of their budget process. He felt that this was a strange way for a Commission to send a recommendation to the Council about an appropriation when the Council has not yet studied the budget. He did not want to get into the mode where individuals, task forces or committees will start thinking that they need to start sending budget recommendations to the Council while the budget is being formed so that they get funding earmarked, especially when the City is not the first responsible agency for operations and services.

Mayor Pro Tempore Chang said that she has been advised that the City needs to cut \$400,000-\$500,000 in this year's budget. Although she totally agrees with the concept of this issue, she felt that the timing was a little off.

Council Member Tate said that the process used by the Library Joint Powers Authority for Santa Clara County to get funds to each individual library is set by a formula that was agreed to at the time that the Joint Powers Authority was established. He said that the Joint Powers Authority will be discussing state take a ways from the Library. The City can go to the County Library Joint Powers Authority to state that the City wants funding done differently. He said that this was thoroughly explored by the Library Commission before coming forward with the request this evening. He stated that there is no way to adjust County funding within the existing budget as it is set by a formula agreed to by the City as part of the Joint Powers Authority. He felt that there were things that the City can do to keep the state funding coming that the Council can discuss on May 7. He clarified that other cities with extended library Sunday hours are being paid for by their respective city coffers or by revamping how they use their formula money.

City Manager Tewes indicated that the City's budget does not currently include funds for operating the library as it is entirely the responsibility of the Joint Powers Authority. The Joint Powers Authority receives resources from a voter approved tax and that they will be considering extending this tax. One option would be to set the tax rate at a level that would provide the needed level of services in each of the communities so that no community would need to supplement the budget with discretionary general fund resources. A second option is supplemental resources by cities that have proposed supplemental services. The Council now has a recommendation from the Library Commission to supplement Sunday library hours. He felt that it was equally appropriate to ask the County Board of Supervisors to supplement for their share of the residents who benefit from the library as it is to ask the City Council to supplement for the residents who benefit from the library. It was his belief that all these options should be considered. He indicated that staff will be providing the Council with a budget recommendation on May 14.

Council Member Sellers agreed that there is concern that this would set a precedent. He was comfortable with moving forward with the action before the Council this evening as it brings it to the forefront of discussion. He appreciated the forward thinking of the Library Commission and that it was his hope that the Council would be able to figure out a way to make Sunday library hours a reality.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Received** the Recommendation from Library Commission and that the Council **Will Consider** the Recommendation During the Fiscal Year 2003-2004 Budget Deliberation process.*

Redevelopment Agency and City Council Action

CONSENT CALENDAR:

Action: *On a motion by Agency/Council Member Tate and seconded by Agency/Council Member Sellers, the Agency Board /Council unanimously (5-0) **Approved** Consent Calendar Item 11 as follows:*

11. AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF BERG AND PARKER, LLP

Action: ***Authorized** the City Manager to Execute an Amended Agreement with the Law Firm of Berg & Parker, LLP.*

City Council Action

PUBLIC HEARINGS:

12. ZONING AMENDMENT APPLICATION, ZA-02-18: COCHRANE – IN-N-OUT BURGERS/APPLEBEE’S

Director of Community Development Bischoff presented the staff report. He indicated that two letters were received within the last couple of days with respect to this application and that they have been made available to the Council this evening. He summarized the amendments proposed to the PUD that include landscaping, egress/ingress, location of the building and franchise architecture. He identified the recommendation of the Planning Commission that would allow for a fast food restaurant in lieu of the two sit down restaurants, deviation from the landscape requirements, allowing the franchise architecture, and the requirement to move the driveway as far east as possible. In addition, the Planning Commission included a condition that states that should the Council approve these conditions and to ensure that the City gets at least one sit down restaurant, it is to be stipulated that the building permits are not to be issued to In-N-Out Burgers until such time that Applebee’s is under construction. The second ordinance included in the packet is staff’s recommended ordinance that would allow for some of the deviations but would not allow the fast food restaurant to be included.

Council Member Sellers noted that staff referenced Applebee’s in a couple of occasions, noting that he did not see this specific name mentioned in the ordinance other than the In-N-Out Restaurant. He said that it was his understanding that a sit down restaurant of the caliber of an Applebee’s restaurant is being proposed.

Mr. Bischoff said that it was his understanding that the applicant is proposing two specific restaurants: In-N-Out Burgers and an Applebee’s restaurant. He stated that there was no other sit down restaurant under consideration at this time.

Council Member Carr noted that two items require Caltran’s approval: landscape and the ingress/egress drive. He inquired whether these were issues that the City can expect a specific time line to receive a response from Caltran.

Mr. Bischoff stated that with respect to the landscaping, public works staff believes that there is a high likelihood that Caltran would approve landscaping of their area but that it is uncertain as to the level of landscaping. In terms of encroachment into Caltran's property for the driveway, he did not have a response.

Mayor Pro Tempore Chang inquired as to the operating hours of the In-N-Out Burgers.

Mr. Bischoff responded that the ordinance does not limit the hours of operation. However, the Council could ask the applicant the hours being proposed.

Mayor Kennedy opened the public hearing

Ron Volley, Northern California Real Estate Manager for In-N-Out Burger, submitted a petition containing over 300 signatures urging the City Council to approve the In-N-Out Burger at this gateway location. Reasons cited in the petition are as follows: it would bring 50-75 jobs into the area; jobs are above minimum wages; would generate a minimum of \$50,000 in sales tax dollars, and that the design proposed is of high quality. He indicated that since the last presentation before the Council, the site plan has changed many times. With the help of staff, the Architectural Review Board (ARB) and the Planning Commission approved the very best layout and design for the project. He said that the original PUD site plan that shows two sit down restaurants overwhelming the site, has dead end parking, does not have sufficient trash enclosures and have a number of problems associated with it. He stated that he has spoken with many sit down restaurants who indicate that the site is grossly under parked and was not a well conceived plan to begin with. He indicated that both staff and the Planning Commission agreed with the traffic engineer that the traffic access and egress was poorly designed. The right turns in only forces all uses in the PUD to go to the road and stack, forcing everyone to make a left turn or to make a challenging u-turn from the Chevron gas station.

Mr. Volley stated that there are several different architectural elevations reviewed by the ARB. He indicated that the ARB did not like the Thoraldson PUD design guidelines and wanted to throw them out. The ARB specifically asked that he model his building to that of the newest restaurant located in Chandler, Arizona as the design does not include franchise architecture. It was his belief that the Chandler design would be the most handsomely detailed building and would enhance the visual integrity of the area and yet remain consistent with the General Plan. He felt that the site plan would solve the existing traffic flow problems by opening up a right turn, right out movement on Cochrane Road. The design proposes a right turn in and right turn out that would align the entrance to the hotels to the rear and would go between the two restaurants. He stated that he met with Public Works staff member Scott Creer who suggests the site plan before the Council. He said that at the Planning Commission meeting of February 25, everyone reached an agreement on an interim solution. It was acknowledged that the entrance would conflict with the Caltran's area and that an encroachment permit would be required. A Planning Commissioner suggested that the driveway be moved over slightly, ten feet, to stay out of the Caltran's area and that when the encroachment permit is received, the driveway could be moved back to its correct place, minimizing any impacts. This resolution was approved by the Planning Commission.

Mr. Volley addressed the landscape buffer that was reduced to three feet in a small area. He is working with Caltran to secure an encroachment easement and to receive permission to beautify the corner to make it a real gateway entrance into the City. Heavy landscaping is proposed and that it would be maintained in perpetuity by In-N-Out Burgers for the City. He stated that he has heard that some individuals feel that In-N-Out Burgers would hurt some fast food restaurant volumes. He felt that In-N-Out Burgers complements other restaurants and that other fast food restaurant volumes would increase. In-N-Out Burgers would bring 50-70 new jobs, would be a good community fundraiser, participate in the child abuse prevention organizations, have a high standard of cleanliness and would develop a great looking facility. He informed the City Council that he disagreed with conditions 8f and 8g. If approved, he requested that the Council base its approval on the Planning Commission approval/recommendations of the project of February 25. He indicated that Ken Keller with the development team was also in attendance to assist with the application presentation.

Council Member Tate noted that Mr. Volley stated a lot about the In-N-Out Burger but that no mention was made of the other sit down restaurant.

Mr. Volley indicated that he has building elevations of the Applebee's Restaurant and that they conform architecturally to his building as well. He stated that he is in negotiations with them and that he is hopeful to sign a lease with them. He said that the Planning Commission understood his plight in trying to attract Applebee's to the site and having his hands tied. The Planning Commission recommended that the approval be for either Applebee's or a 5,000-6,500 square foot sit down restaurant on the site to give him the flexibility should Applebee's want to low ball him on rent before signing the lease. It would be his agreement with the City to sign a lease with Applebee's or a higher standard restaurant, indicating the he is talking to Chile's and other restaurants. He agreed with the condition that In-N-Out Burgers would not receive the building permit until the sit down restaurant is under construction.

Council Member Tate noted that the elevations contained in the Council packet are franchise architecture of Applebee's and that the elevations do not correspond to the In-N-Out Burgers' building.

Mr. Volley said that he found that in trying to attract a sit down restaurant to Morgan Hill, Applebee's gave him their standard proto type building and that they have minimum flexibility. He said that Applebee's did make some changes to confirm with the In-N-Out Burgers' building. However, they too said that they need to have their franchise looks. He said that one of the difficulties in attracting a national caliber, good chain restaurant is dealing with their identity. He indicated that a lease with Applebee's has been put together but that not all items in the lease have been agreed to. Therefore, the lease is not signed with Applebee's.

Mayor Kennedy requested that Mr. Volley address the economics/business aspects of this location. He inquired whether this would be a successful business venture should the Council approve the application this evening.

Mr. Volley indicated that he is assuming a minimum of \$5 million dollars in sales with the combination of two restaurants. This is based on In-N-Out Burger's experience in the past of a location in Gilroy and Livermore that have similar demographics and similar freeway counts. He was very confident of their

success at the proposed location. He said that Applebee's has looked to In-N-Out Burgers to pave their parking lot and install their site improvements in an amount of \$500,000. Applebee's is looking toward In-N-Out Burgers to pay for the assessment bond that is currently on the property of \$15,000 per year for the future, as well as to pay for city fees. He said that In-N-Out Burgers is prepared to find a restaurant and help them get started in order to bring a sit down restaurant to the City.

Council Member Sellers noted that it was indicated that the egress/ingress was moved to the west so that it is no longer an issue with Caltran as he was anxious that this gets completed before hand.

Mr. Volley said that the big challenge would be in the time delay involved in getting the approval for the encroachment permit from Caltran. Rather than to hold up the project, the Planning Commission and In-N-Out Burgers agree that on the interim, until In and Out receives the encroachment permit, he would move the driveway approximately 10-12 feet to the west and be just outside the Caltran's encroachment area. As soon as In-N-Out Burgers receives the encroachment permit, he would spend the money to move the driveway back.

Council Member Sellers said that ideally, it would be preferable to obtain Caltran's approval of the encroachment permit. He stated that he was comfortable with the location of the building for the In-N-Out Burgers, but felt that the sit down restaurant location could be moved closer to Cochrane without adverse impacts on parking. He inquired whether it would be possible to move the building closer to Cochrane.

Mr. Volley indicated that he spoke with Appleby's, Chiles and Olive Garden about the site plan and that they were all interested in having the building setback so that the parking was available. He indicated that individuals make a decision based upon seeing available parking. He indicated that Applebee's would not proceed with the site if there was any movement of the location of the building.

Council Member Sellers said that the Council could revisit the building location if the restaurant was any other than Applebee's

Mr. Volley indicated that he spoke with Caltran and that their initial reaction is that the encroachment permit is not a problem but that there is a process that he has to go through.

Council Member Sellers said that it sounds that the concern that staff has is that Caltran would only allow minimal landscaping. He stated that he would like to find a way, should this turn out to be the case, where In-N-Out Burgers is willing to install the landscape standards that the City would like to see. If Mr. Volley is in concurrence that the project not be held up because Caltran is requesting minimal landscaping, that the City work with Mr. Volley to try to get a different response from Caltran.

Mr. Volley indicated that George Nicholson, In-N-Out Burgers' representative and he met with Public Works staff member Scott Creer to start the process. Mr. Creer agreed to talk to Caltran. He has not heard that Caltran would not allow him to landscape the area appropriately or nicely. He has no doubt that they may not want trees in their property but felt that nice landscaping would be appropriate, especially if In-N-Out Burgers was to sprinkler, landscape, and maintain it.

Mayor Pro Tempore Chang inquired as to the hours of operation for the In-N-Out Burgers.

Mr. Volley indicated that the hours of operation until 1 a.m. during the week and 1:30 a.m. on the weekends (Friday and Saturday nights).

Mayor Pro Tempore Chang said that she has seen In-N-Out Burger become a teenage hang out as there is no place else for them to go. She requested that the City Manager request that the City's Chief of Police look into this concern.

City Manager Tewes indicated that he passed on Mayor Pro Tempore Chang's concern to Mr. Volley and that he is prepared to respond.

Mr. Volley indicated that he has not heard of any incidents of any activity at the Gilroy location. He requested that Mr. Toy check into this and that Mr. Toy confirmed that there was an incident in Salinas. The other In-N-Out Burgers being referred to by Mayor Pro Tempore Chang is a store located at the Eastridge Mall located at Tully and Capital. The In-N-Out Burgers is a part of a larger shopping center and that youth congregated there. In-N-Out Burgers contacted the property owner and the shopping center manager because the kids would move off the property onto the Safeway property. He stated that In-N-Out Burgers did not have the ability to deal with the situation. He stated that In-N-Out Burger has since made an agreement with the property manager, hired security and that this problem has not returned. He stated that In-N-Out Burgers has become pro active and is ready to deal with the situation should it arise again this spring.

Mayor Pro Tempore Chang indicated that the Council has always desired a sit down restaurant in this PUD. She understood that In-N-Out Burgers is promising an Applebee's, noting that a signed lease has not been secured. She indicated that staff members/Planning Commissioners informed her that Applebee's is asking for a few incentives from the City and that the City would have to give Applebee's so much money for them to locate in Morgan Hill.

Mr. Volley indicated that Applebee's has asked either the City to participate in reducing the fees. However, In-N-Out Burgers does not agree with this request. He said that In-N-Out Burgers will handle this internally as he does not believe that this burden belongs on the City. In-N-Out Burgers, as the developer, would pay the fees and attract either Applebee's or another restaurant chain that will pay the fees.

Mayor Pro Tempore Chang inquired whether Mr. Volley would return to the Council to state that nothing works economically for a sit down restaurant and that he would request the approval of another fast food restaurant in the PUD.

Mr. Volley stated that he would be embarrassed to return to the City Council and request a second fast food restaurant in the PUD. He felt strongly that he would be able to attract a sit down restaurant of the caliber that the City wants. He is prepared to close on the land deal and that In-N-Out Burgers would be making a substantial investment. If In-N-Out Burgers is unable to develop the site in two or three years, he would take a look at the situation at that time.

Mayor Kennedy noted that condition E (page 123) states that the sit down restaurant shall be under construction prior to the issuance of a building permit.

Mr. Volley stated his agreement to this condition.

Council Member Carr inquired whether In-N-Out Burgers has secured other agreements for landscaping with Caltran.

Mr. Volley responded that he was not aware whether In-N-Out Burgers has other agreements with Caltran but that In-N-Out Burgers has had a lot of interactions with them because other properties have been developed along the freeway. In-N-Out Burgers has improved their landscaping, removing dead landscaping and tree trimming in other jurisdictions but that he was not aware whether In-N-Out Burgers maintained the landscaping in other properties.

Council Member Carr stated that both the approvals that In-N-Out Burgers is seeking from Caltran appear to be important to this development. Should In-N-Out Burgers be unable to obtain Caltran approval, would there be a need to review the entire site plan? Would Mr. Volley be willing to come back and work with the City on a 27-foot encroachment on a 30-foot setback for landscaping and the drive aisle for egress/ingress?

Mr. Volley stated that he felt confident that this would be a win-win situation for Caltran, the City and In-N-Out Burgers.

Council Member Carr said that he would like to see the Caltran right of way landscaped and maintained. He expressed concern with the ingress/egress. He was pleased to see that Mr. Volley and the Planning Commission worked out an interim solution. However, he did not want to see an interim solution become a 10-20 year solution simply because Caltran would not approve the right of way. He felt that the City needs to find some assurance that if Caltran does not provide its approval, the City and In-N-Out will need to figure out what will be done for the long term. He noted that Mr. Volley mentioned that sit down restaurants he has spoken with are unwilling to consider moving the buildings forward as they would be afraid that customers would pass by if they do not see parking. He inquired whether this was an intuition restaurant owners had or whether a study was conducted that shows why someone would pull in and go to a restaurant.

Mr. Volley said that In-N-Out would agree to return to the City Council and discuss alternatives should Caltran not grant approval. He indicated that he did not query restaurant representatives further as to whether or not they had a study on patrons and their parking needs. He did hear more than once that it was important for individuals to see parking available to pull into restaurants.

Council Member Carr inquired whether the ordinance only applies to this applicant or would it apply to the property itself? Should the In-N-Out Burgers be unable to get a sit down restaurant to come along with them on this property, could In-N-Out Burgers sell the piece of property with the approval of a drive thru/fast food restaurant that would not be specific to In-N-Out Burgers?

Mr. Bischoff responded that the ordinance would apply to the property itself and that In-N-Out Burgers can sell the property and the land use entitlements. He did not believe that the Council could draft the ordinance where it could be specific to In-N-Out Burgers.

Council Member Carr inquired whether the ordinance could be drafted so that a timeline could be applied so that the land use entitlement would last for a certain period of time.

City Attorney Leichter responded that the Council could apply a specific timeline for the land use entitlement. However, she did not believe that the City could limit the land use entitlement to a specific business.

Council Member Sellers noted that Sections 4 and 6 make specific references to In-N-Out Burgers. He inquired as to what degree this precludes another fast food restaurant from operating in the PUD if the name is the same.

Mr. Bischoff noted that the Council has a copy of a precise development plan which shows in general what the building will look like. To the extent that another restaurant is willing to occupy a building that looks like an In-N-Out restaurant, that restaurant could take over the building. However, to change significantly from the architecture of the PUD would require an amendment to the PUD.

Jim Steward, 851 Cochrane Road, stated his support of In-N-Out Burgers as it would be an asset to the community as it is a first class company with superior product/services. In-N-Out Burgers would provide several jobs. He felt that In-N-Out Burgers is a type of fast food restaurant that is non existent in Morgan Hill. Everyone who works in the Cochrane Road area commutes or lives in the area does not have the time nor money to prepare meals or to patronize a sit down restaurant or visit McDonalds. If In-N-Out Burgers is not allowed to build on this property, he felt that it would be years before anything is developed and would hamper future development in the Cochrane area.

Stephanie Martin, 1245 Diana Avenue, felt that In-N-Out Burgers or Applebee's would provide a variety of foods. Having an In-N-Out Burgers in Morgan Hill would benefit the community by providing jobs and generate tax revenue. This would give local residents who are unemployed a better opportunity to get a job. She stated her support of the proposal before the Council.

No further comments being offered, the public hearing was closed.

Council Member Sellers indicated that the primary issue of concern was the agreement for two sit down restaurants. In looking at the issue further, he felt that the premise of the agreement evolved toward the end of a long discussion of the PUD. As the Planning Commission discovered in their review of the layout, there were significant concerns about the ability to site two sit down restaurants on the site. In looking at the limitations, it precluded what was originally thought would be allowed in the PUD. He felt that this proposal, as it has evolved, has done what it can. The second concern that everyone has addressed deals with circulation that turned out to be a much larger issue that was not addressed sufficiently. He believes that this development would rectify and improve circulation through the entire section. He was pleased to hear that a public subsidy is not being requested as it was thought that this

should be a viable site and that it should not be publicly subsidizing. He felt that all these concerns have been addressed. He requested that an effort be made to move the building forward as the project develops. He further recommended that the Economic Development staff continue to be involved with In-N-Out Burgers to look at alternative sit down restaurant partners should Applebee's not locate within the PUD, attracting the highest and best use for the remaining facility. In reviewing all the issues over the last few months, he was pleased that the Council held firm initially. He expressed concern that the City would develop a Gilroy syndrome where Morgan Hill is adding a new business that is merely taking tax revenues from an existing business. In looking at the market share for In-N-Out Burgers, he felt that In-N-Out Burgers would compliment the existing McDonalds Restaurants. He felt that the egress/ingress issue would help rectify the current circulation situation. Therefore, he was comfortable supporting the proposal this evening.

Mayor Kennedy stated that he supported the original proposal based on the assurance from Mr. Volley and In-N-Out Burgers would bring a sit down restaurant onto the adjacent site. He indicated that he would be supporting this application for several reasons. He felt that it was important that the City move forward with a project that would show the community and the Cochrane Business Park area that the City is truly open for business and that the City is willing to bring in new business. He felt that there was a desperate need for good sit down restaurants and that it was his belief that In-N-Out Burgers would follow through with their commitments. He felt that it was important that the City not send a negative message to the business community as it is hard to shake off a negative image of turning down projects. He indicated that he is still hearing negative comments about how difficult it is to get projects approved in Morgan Hill. In times of economic uncertainty, he did not believe that it was a time to turn away good businesses, particularly a business that could bring \$60,000-\$70,000 in revenue a year. He also felt that there was synergy in this location with In-N-Out Burgers and a sit down restaurant to the adjacent hotels and businesses. Having hotels where there is an adjacent restaurant may also influence a person's decision to stay at a particular motel if there is a nice restaurant nearby. He noted that the City's hotel tax has dropped significantly and that the City needs to help bolster up this side of revenues. He stated his support of the project.

Council Member Tate stated his support of In-N-Out Burgers at this location. However, he supports staff recommendation because they are upholding the General Plan, specifically; the gateway location and that development should meet certain standards. It was his belief that Mr. Volley did a wonderful job of trying to work with the City and achieve gateway standards. In looking at what is being proposed, there is a big sea of cars between the restaurants and Cochrane Road in a gateway location. He was adamant that the restaurants need to be pulled forward. He felt that the City would want a gateway location that would enhance In-N-Out Burgers, a sit down restaurant and other uses if they can confirm to the standards. He would like to support the proposal with the understanding that the buildings be moved forward and that the architecture for the sit down restaurant be adaptive or compatible to that of the In-N-Out Burgers' design. He indicated that his third element of concern is the whole question of landscaping, noting that it was light. If there is not to be a compromise on the parking in front, maybe landscaping can be used throughout the parking lot to soften the impacts of the vehicles. He said that he would support the sit down restaurant even though it violates what was originally desired in this gateway location but felt that more work was needed to meet the intent of the General Plan on

this gateway location. He felt that Mr. Volley has come a long way and that he would like to work a little bit more to get to where the PUD should be.

Council Member Carr stated that he concurred with a lot of Council Member Tate's comments. He felt that there were ways that the City and applicant can work with Council Member Tate's concerns and still be able to move forward this evening. He commended Mr. Volley and the In-N-Out Burgers' representatives for the work that they have done. He agreed that the proposal has come a long way but that there were still some things that need to be worked on. He felt that the issues that Council Member Tate raised are very difficult issues. He noted that the Council approved a general plan and that the Council needs to find ways to support the general plan as best as possible. He stated that he too wants to support economic development and business improvements within the City but not at the expense of the City's general plan or best planning practices for the City. He felt that there were ways to accomplish these goals together. He continues to have the concern about the PUD. Perhaps the requirement for two sit down restaurants were hastily added to the end, noting that he was not a part of the approval of the original PUD. He stated that the community was promised something and that he was not sure whether citizens understood what may have happened to the PUD. If the Council is going to change the PUD from what the community expected of two needed sit down restaurants to one sit down restaurant and one fast food restaurant, there was some value to this. He felt that there are several things that In-N-Out Burgers has identified that the City would be getting that add value: 1) working toward improving the traffic circulation of the entire area; and 2) the landscape plan, with an agreement with Caltran, is important and could improve the entire area/community. He would agree to consider the value of changing the PUD if work can be done on the other issues. The issue of the location of the buildings is important to him as well. He understood that the individuals that Mr. Volley has spoken with are professionals and do this for a living. However, he needs facts to back up the statement that parking is needed on the street side for the business to be economically successful.

Council Member Carr said that the City went through great lengths to move the Chevron Station and their building up to the street and that the City was successful in doing so as this is a busy gas station. He indicated that the City has also had this conversation with other businesses as well. He stated that he was not ready to give this issue up simply because real estate individuals have stated that they will not get the business they need. He expressed concern that the response he received from staff when he asked whether the ordinance is tied with the property or with the developer. He stated that he believes Mr. Volley when he states that should he not be able to get a sit down restaurant that he would be too embarrassed to return to the Council and request an amendment to the ordinance. From a business sense, In-N-Out Burgers would not be able to pull building permits until all conditions are satisfied. This would result in a piece of property being a negative for In-N-Out Burgers and that it would be sold. If so, it could be sold to any fast food chain that wants to locate a fast food restaurant at this corner. He stated that this would be unacceptable to him as the Council has heard great accolades about In-N-Out Burgers, noting that Council Member Sellers addressed the market and that In-N-Out Burgers is different from the other fast food restaurants in town. Therefore, the City would not be approving a competing business. He would not like to see this agreement or the property sold off to another developer for another fast food. Therefore, he would like to find a way to tighten up this language/requirement. He clarified that with all of his concerns this does not mean that he is not ready or willing to move forward this evening. He felt that these issues could be addressed this evening and

move forward so that In-N-Out Burgers has an agreement in hand to be able to fulfill the other requirements such as a sit down restaurant that the City would like to have accomplished. He noted that City Attorney stated that the ordinance cannot be tied to a specific business operation but that it can be tied to a timeline.

Council Member Tate did not know how his concerns would be addressed by modifying the ordinance this evening.

In response to Council Member Carr's question, City Attorney Leichter stated that this is a precise development plan and that it would be difficult to move forward with the ordinance without the site plan itself.

Mayor Kennedy said that he has seen several projects where the City required the project building to be moved forward. He stated that he has been dissatisfied with the results such as the Walgreen's Drugstore. This proposal was presented to the Council with a lot of landscaping in front but based on the fact that the City insisted on the building close to the street, the City ended up losing most of the landscaping. He felt that the City ended up with a building in a location that does not look attractive. He felt that there were ways to address the open lot with the use of berms, trees, and landscaping to address concerns. He was willing to work with the Council in such a way to make the project work. However, it was his gut sense that he does not see the value of moving the buildings forward. He did not find the Chevron building as being any more attractive than it would have been pushed back. He said that certain things work for businesses and certain things do not work. When one interferes too much with the design and layout, you can interfere with business realities and what works for these businesses.

Mayor Pro Tempore Chang noted that this is a gateway location and that the original PUD required two sit down restaurants. She noted that a fast food restaurant wants to move forward with a promise of a sit down restaurant, noting that the project is in the same place it was seven months ago. She stated that she is willing to work with everyone and to work on a compromise. She did not recommend that the City cut corners and that the Council adhere to the City's general plan. She has a sense that the Council is ready to move forward if the details are met to most Council Members' satisfaction. She recommended that the project be approved in concept and that it be referred back to staff in order to address Council members' concern.

Council Member Tate said that he would like to approve the proposal this evening but that he did not know how the Council can proceed as approval would be of a specific site plan. He stated that he would like to have all Council members agree to tighten up the approval versus having a split vote on whether it agrees with the specific ordinance.

Council Member Sellers inquired whether the Council has any latitude that it can impose to state that it would like the building moved as far forward as possible and that staff work with the applicant to accomplish this requirement.

Mr. Bischoff stated that unless the Council is more specific as to its requirement of the location of the building, the building would be constructed as currently shown. He said that it was his experience that applicants always want their buildings setback further back and want the sea of parking in front.

Council Member Sellers said that he did believe that the building should be sited on the street or as close as Chevron is. He felt that most of the concerns raised by Council members this evening would be addressed through the ARB process and would be addressed in the ordinance. He would like to figure out a way where the City could provide some latitude regarding the location of the buildings in order to move forward with the application this evening.

Mr. Volley stated that there was not another fast food chain that could afford or want to undertake this project. He would agree to a two-year limit on the approval to find a sit down restaurant. As an alternative, the Council could indicate that a unique, non duplicative fast food restaurant chain could be approved. He said that the landscape plan calls for mature trees throughout the parking fingers in front of the building and calls for a 3+ foot berming in front of the building in the 30 foot landscape area. Therefore, the City would not see a sea of parking but would see a well landscaped perimeter and trees. He stated that his company has spent over \$175,000 on the preparation of different plans, working with staff, returning to the Council and securing extensions with the property owner. He felt that he has presented the Council with a real project. However, In-N-Out Burgers does not have an endless pocket and cannot go much further. He said that there are multiple problems with placing the building up front. By putting the buildings up front, individuals would be walking in front of the trash enclosures or the trash enclosures would be placed out on the street. The second problem is that individuals would come into the site with a building upfront and would not be able to see other cars making movements and becoming an unsafe situation. He felt that placing buildings upfront works in urban, downtown locations where there is on street parking and there is pedestrian traffic. He noted that there is no residential development nearby and that it is all vehicle traffic with the exception of individuals walking from hotels to the restaurant. For safety, convenience and operator safety, it does not make sense to site the buildings up front.

Mayor Kennedy indicated that he met with Mr. Volley earlier and that he mentioned his opposition to condition 8f, the interim access driveway, based on the necessity and timing for the installation of the interim access driveway to be determined by the Director of Public Works.

Mr. Volley indicated that the Planning Commission made a recommendation that he move the ultimate driveway location over westward approximately 10 feet on a temporary basis to get out of the Caltran's encroachment area until he receives the permit. He concurs with this recommendation as it is a great solution. When he receives the Caltran encroachment permit, the driveway could be moved 10 feet back with no substantial impact. He noted that condition 8g conditions him to not start any project until he has the Caltran encroachment permit. Thereby delaying the project for six months to a year and making the project economically infeasible. He said that this problem was solved by the Planning Commission's recommendation to move the driveway over 10 feet outside of the encroachment in order to move forward with the project. Should the Council approve the Planning Commission recommendation, Conditions 8f, or 8g would not be necessary.

Mr. Bischoff agreed with Mr. Volley's comments that should the Council wish to reword condition 8f it would be to state that the interim driveway would be located 10 feet to the west of the ultimate driveway location. This would be consistent with the direction and the intent of the Planning Commission. Also, the first clause of condition 8g nullifies the need for condition 8f and that the elimination of the first clause would be appropriate. Should the Council amend these conditions, there is no guarantee that Caltran would approve the encroachment permit and that there would be a 10 foot offset.

In response to Council Member Sellers question, City Attorney Leichter stated that should the Council so be inclined to include a timeline requirement, it would be an expiration of the ordinance. This could be addressed in a new section 5 that states that of the following preconditions do not occur; the ordinance shall expire in its own terms, moving the other sections down in number. She pointed out that Section 8d in the defense and indemnity, makes the project subject to certain conditions, including defense and indemnity. It was the contemplation that the ordinance would not expire. She said that there could be claims which the City would request defense and indemnity for after the expiration should the Council time the ordinance out. She requested that Section 8d continues.

Mayor Pro Tempore Chang inquired whether anything can be done to ensure that Caltran's approval of the encroachment of 10 feet can be achieved.

Mayor Kennedy responded that should the Council eliminate the first clause of paragraph g it would state that the applicant shall secure approval from Caltran for construction.

City Attorney Leichter clarified that paragraph 8g pertains to the building permit for the sit down restaurant. Should the Council strike the first clause, the applicant does not need to obtain the encroachment permit until later on in the process.

Mr. Bischoff indicated that the Council may wish to add additional language to section 8g of the ordinance that states that should within a year of opening both restaurants that this matter can be returned to the Planning Commission for consideration of alternative traffic mitigations as necessary. He stated that should the applicant not be able to secure an encroachment permit from Caltran and it does not become a problem, the City does not have to do anything. However, if it becomes a problem, it may give the Council the latitude to look at and impose other requirements for mitigations of traffic impacts. He said that traffic problems are to be determined by the Chief of Police.

Mayor Pro Tempore Chang inquired where the permanent landscaping would be installed should Caltran approves landscape installation in their right of way.

Mr. Bischoff informed the Council that the public works department believes that Caltran approval to landscape their right of way should be easy to obtain. He was not certain how certain public works staff felt that the easement for the driveway was obtainable from Caltran. However, they believe that the easement to landscape should be easy to obtain. Should Caltran refuse to grant the easement to landscape, the gateway would suffer.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration.*

Action: *Council Member Sellers made a motion, seconded by Mayor Kennedy, to **Waive** the Reading in Full of Ordinance of the Planning Commission Recommendation approving two restaurants with the following: modification to Section 8g as suggested by staff to stipulate that “~~Prior to the issuance~~ **Within one year of the issuance** of a building permit for the sit down restaurant...,” adding a second sentence that would reference the specific mitigations should Caltran not approve the easement; the addition of a new Section 5 that references expiration of the ordinance within two years; and modification of Section 8d such that the ordinance would continue past the expiration period.*

Council Member Tate stated that he has raised concerns and that they have been ignored in the motion. He expressed concern about the landscaping, the location of the building as well as franchise architecture. He said that the applicant made some points and that he was willing to sit down and discuss these points with the applicant. He noted that the applicant claims that the landscaping would be robust but that he questioned this. He felt that a lot more could be done with the landscaping, noting that it does not meet the 50% requirement around one of the buildings. He felt that more can be done with the landscaping in case the easement from Caltran cannot be obtained. He was not convinced that the buildings could not be pulled forward. He said that he would not support the motion even though he would support bringing In-N-Out Burgers to this location. He felt that the City needs to do more work to get protections for the gateway areas.

Council Member Sellers said that in looking at the ordinance he sees a 40 foot landscape buffer being referenced and that the landscape area would be supplemented by the adjacent Caltran right of way landscaping. He agreed that the design elements need to be dealt with. However, he reads that the applicant is to comply with the City-wide PUD architectural standards to the greatest extent possible. He said that he would like to give the ARB the latitude to work out the details and mitigate the franchise architecture. He felt that the ARB would mitigate the franchise architecture based on the ordinance, their past performance and the comments expressed by the Council this evening. He felt that it all comes down to a Council comfort level to see that the remaining issues are addressed. He stated that he concurred with the Mayor's comments as well as the applicant's comments regarding the building setback. He stated that was comfortable with the proposed location of the buildings.

Mayor Kennedy noted that the proposal was approved by the Planning Commission on a 6-1 vote and that the ARB has approved the proposal, discovering the In-N-Out Burgers construction in Arizona, noting that the applicant has agreed to perform this type of architecture.

Mr. Volley indicated that he has met twice with the ARB, providing them with new landscaping plans and the Chandler building elevations and that these plans were approved by the ARB.

Associate Planner Tolentino indicated that this project would go back to the ARB for final approval as they only provided preliminary comments.

Council Member Carr said that as part of this ordinance, the Council is granting the ARB the authority to redefine the architectural theme of the Thoraldson PUD. He inquired at what point the Council would be seeing the change to the Thoraldson PUD.

Ms. Tolentino pointed out that the elevations presented to the Council this evening would be close to what the ARB has expressed acceptance to. Even though the ARB would be redefining the Thoraldson PUD, they are redefining it to allow for the elevations presented to the Council this evening. Therefore, there would not be significant changes to the elevations. She indicated that the PUD would go back to the ARB for final approval and that this would be the final stage in the approval process.

Council Member Tate said that he would be more comfortable in having the plans return to the Council after approval by the ARB with the ARB having the input being provided by the Council this evening.

Mr. Volley indicated that he is due to close escrow in 15 days. He indicated that the ARB has approved the site plan and the location of the building landscape plans. The ARB requested that he come back in order to make final changes to the hues and colors of the building and review of the landscape plans one final time. This was also the case with the Planning Commission.

Mayor Pro Tempore Chang stated that she would like to see a comfort level in place for everyone, including staff.

Mr. Volley indicated that his primary contact was with Ms. Tolentino, the ARB, a subcommittee and the Planning Commission. Therefore, he has been working with everyone. He felt that Mayor Pro Tempore Chang feels a sense of discomfort because changes have been made to the PUD guidelines and that when these changes went to the ARB; they threw out all of the changes. He indicated that the ARB wanted to start over with a new plan. The original site plan showed his building in another location. Staff highly recommended that the building be moved to the location it is shown at this time. He said that he has jumped through every hoop to give the City what it wants and to develop this piece of property. He felt that everyone acknowledges that two sit down restaurants do not work and that the site plan that staff had in the PUD shows a dead end parking lot. The access to the site does not work as you cannot circulate to the two hotels, two or one sit down restaurant, an In-N-Out Burgers and Chevron, all making left turns. He has spent the money and time on a traffic engineer to conduct a study to make a recommendation to fix the circulation problem for the benefit of everyone. He said that this has been the most difficult project that his company and In-N-Out Burgers have ever worked on. He stated that his company is willing to bend over backwards to spend a lot of their money to bring in a sit down restaurant to the PUD. He felt that there has to be some incentives to bring in a certain type of markets in. He is willing to be the incentive to bring a sit down restaurant. He felt that the property would sit for a long period of time if he is not allowed to develop it. He understood the economics of what restaurants will pay.

Mayor Kennedy stated that this project has been ongoing for a long time. He agreed that the site would sit empty for a long time if not allowed to develop. He said that this was a good project. He stated that he has been told that one reason the City is having difficulty recruiting sit down restaurants is because the first one has not come in. He felt that the City may need to take some risks to bring the first sit down

restaurant in. He agreed that not everyone would be satisfied but that everyone has tried to make this project work. He felt that the City needs to allow a certain amount of risk in order to make the project work. This risk will allow the City to attract other restaurants.

Council Member Carr inquired whether the motion could be amended to allow the PUD to return to the Council following review by the ARB to attain a greater comfort level for the Council.

Council Member Sellers noted that Mr. Volley has stated that this has been his most difficult project. He felt that the City has pushed as much as it can and felt that the City is on the verge of reinforcing to the rest of the world that this is a difficult town to do business in. He felt that there has to be some faith given and agreed that there were some loose ends to resolve. However, he felt that the loose ends were minor relatively to the overall scope of the project. He requested that the Council vote on the motion on the floor and that the Council talk through the approval, if necessary. He did not believe that it made sense to have the applicant return to the Council as it may jeopardize the project in terms of closing escrow. He did not know what goal would be achieved if the application was continued other than to get another chance to approve the project if all the details have been worked out.

Council Member Tate said that it was his goal to preserve the integrity of the General Plan. He said that he would be willing to do the work necessary to address them over the next few weeks. He said that he could not move forward with the approval process this evening just because there is an ultimatum on a date.

Mayor Pro Tempore Chang stated that it was her belief that Council Member Carr and her concerns have been addressed. She would like to address Council Member Tate's concern. She recommended that this project be brought back to the Council in two weeks and allow the applicant to work with Council Member Tate and staff. The time would allow compromises to be considered.

Council Member Tate said that he would like to have his three areas of concern addressed: landscaping, understanding what can be done to alleviate the location of the building(s), and the architecture for the sit down restaurant.

Mayor Kennedy inquired whether having the Council spend another week working with Mr. Volley on this issue would work within his schedule.

Mr. Volley stated that it was his understanding that he received ARB approval of the site plan and the landscape plans. The only challenge to the landscaping, other than the parameter of the landscaping by the thru lane, is around the building and that the only reason he cannot include additional landscaping on the building is because of the leaning roof that covers the patio. He said that landscaping cannot be planted in this area because sun does not shine in this area. He inquired if the meeting would be with the ARB and a Council subcommittee within the next week?

Mayor Kennedy recommended that a meeting with Mr. Volley include representatives from the ARB and Planning Commission along with a Council representative.

Mr. Volley stated that he would be willing to work with the City and agree to a one week continuance.

Mr. Keller stated that he has personally worked on this project since day one and that he has moved the buildings, landscaping and details on the architecture a number of times, including helping with the Applebee's restaurant. He indicated that Mr. Volley was able to convince the Applebee's representative to make minor changes to the building. He took it upon himself to make changes to Applebee's building based on what was provided and that the Applebee's representative was amenable to the changes. He felt that In-N-Out Burgers has made an attempt to address the franchise architecture for both the In-N-Out Burgers and the Applebee's building. He has sat down with the ARB twice, indicating that the first submittal to the ARB was based on what the Planning staff asked him to do. The ARB stated that they were not comfortable in seeing the elements projected in this project as something that would be projected as a Gateway element. The ARB felt that the elements of the hotels that he was supposed to follow were substandard and that they felt that the roof materials, colors, finishes, etc., were not elements that they wanted to see in the Gateway. It was his belief that this was because this was out of their control at the time and that it was not something that was strictly enforced at the time. He felt that the ARB now has an opportunity to address this. The ARB took it upon themselves to go to their website and download images of In-N-Out Burgers from all over the area. The ARB specifically picked the store from Chandler, Arizona and stated that they would like to see a design along these lines. As far as going back to the ARB, the only condition that he was sent forward with is to make minor modifications to the palette of landscape materials to be used on the site as well as the colors and materials to be used on the building. The ARB was fine with all other aspects of the project. Therefore, he did not understand why the project would need to go back to the ARB and then return to the City Council.

Council Member Sellers called for the question, noting that he incorporated three changes to the ordinance that he was already uncomfortable with to address some of the Council Members' concerns. He felt that the remaining concerns would be addressed by the ARB and in going through the final process. He felt that the Council needs to move forward with the application this evening.

Vote: *The motion **failed** 2-3 by the following vote: AYES: Kennedy, Sellers; NOES: Carr, Chang, Tate.*

City Manager Tewes inquired whether it would be appropriate to have the motion on the ordinance next week if it is the Council's desire to have the ordinance return to the Council next week.

Council Member Tate inquired whether action on the ordinance could be continued to next Wednesday, April 30, 2003.

City Attorney Leichter indicated that the Council could adjourn this item to April 30 for final approval.

Action: *Council Member Carr made a motion, seconded by Council Member Tate, to **Waive** the Reading in Full of Ordinance of the Planning Commission Recommendation approving two restaurants with the following: modification to Section 8g as suggested by staff to stipulate that "~~Prior to the issuance~~ **Within one year of the issuance** of a building permit*

for the sit down restaurant...,” adding a second sentence that would reference the specific mitigations should Caltran not approve the easement. The addition of a new Section 5 that references expiration of the ordinance within two years. Modification of Section 8d such that the ordinance would continue past the expiration date. The ordinance is to come back to the City Council for approval on April 30, 2003.

Mayor Kennedy requested clarification on what will take place during the interim week.

Council Member Carr indicated that he heard members of the City Council wanting to meet with Mr. Volley to get a better understanding of the project. He would like to give the Council Members the opportunity to do this.

City Clerk Torrez requested clarification of the motion and inquired whether it was the intent of the motion to have this item return for introduction of the ordinance. She noted that adoption of the ordinance would need to occur at a regular meeting of the City Council.

Mayor Pro Tempore Chang questioned why the Council needs to introduce the ordinance this evening when some of the Council Members were not comfortable with it. She felt that it was the intent to postpone this item to allow Council Member Tate the opportunity to get a sense of comfort.

Council Member Carr stated that he did not want to place a delay on the project, indicating that it sounds that a one week delay is as far as Mr. Volley would agree to. He wanted to respect Mr. Volley’s time schedule.

Council Member Carr indicated that it was the intent of his motion to table introduction of his motion to April 30, 2003.

City Manager Tewes clarified that should the ordinance be introduced this evening, the ordinance would be brought back for adoption on May 7, at any event.

Council Member Sellers recommended that the ordinance be introduced this evening as this would still afford two weeks to address Council concerns, noting that adoption cannot occur until May 7.

Council Member Carr noted that there are members of the City Council who are uncomfortable with ordinance introduction this evening. If the final adoption of the ordinance would occur on the same date, the Council can give those members on the City Council the opportunity to be comfortable with the ordinance, and that he would like to respect this.

Vote: *The motion to table the first and second readings of the revised ordinance, as amended, until April 30, 2003 **carried** 4-1 with Council Member Sellers voting no.*

Mayor Kennedy requested that Mr. Volley meet with Mayor Pro Tempore Chang and Council Member Tate to discuss the concerns that they have to see if there was anyway that these can be addressed. This item would return to the City Council on April 30, 2003 for a vote.

City Manager Tewes said that in the intervening week, staff will prepare the draft ordinance along the lines of the motion. This will afford the Council the opportunity to review the amended ordinance language in front of it at that time.

Council Member Sellers stated that he wanted to make sure that the next time that the Council starts talking about economic development, that it keeps in mind this two hour discussion. He said that the Council wonders why it does not get more businesses that want to locate in Morgan Hill.

Council Member Carr felt that if economic development is a Council concern that the Council needs to address these issues in the General Plan. He felt that the policies contained within the Council adopted General Plan are blocking PUD, causing problems for staff and the Council. If the Council really wants to address this issue, he felt that the Council needs to consider revisiting some of the General Plan policies so that the Council is not faced with these problems in two hour meetings. What is being asked of the Council is to change the requirements contained in the General Plan that the entire Council supported.

Council Member Sellers recommended that the City Council consider item 16 at this time.

Action: *It was the consensus of the City Council **to consider** agenda item 16 at this time.*

City Council Action

16. COMMUNITY AND CULTURAL CENTER OPERATIONAL POLICIES AND PROCEDURES UPDATE

Recreation and Community Services Division Manager Spier presented the staff report.

Mayor Kennedy stated that he has worked with several groups who are working on various fundraising events. He felt that the report addressed the issues raised (e.g. insurance). He felt that staff was on the right track and that he supports what staff is recommending.

Council Member Sellers said that concerns raised over the past few months come from vendors who want lead time, the insurance issue, and the rates. It was his hope that vendors and others would realize that the Community and Cultural Center is a unique facility. He felt that the City has outstanding staff throughout the entire Parks and Recreation Department, particularly at the facility. However, it is a different kind of staff than you might see in other venues or competitors. He wanted to get a sense from staff on how the City is dealing with individuals and whether staff is following up aggressively with individuals for the use of the facility.

Ms. Spier said that if the City can become more process friendly and become a one shop stop that would help people make decisions. Staff is finding that individuals want to know the bottom line as to cost and whether the facility is available and that staff finds it difficult to provide these answers. The City has a community that is testing the grounds and shopping for a facility to use. She said that staff has made

some internal reassignments among staff. She indicated that the center is being used quite a bit and continues to grow. Staff is trying to attract it many areas but that staff is finding that it is not as competitive as it could be without some of these processes. She stated that staff would like to suggest negotiating with one security company as this would provide security for city staff as well as a way to monitor users.

Council Member Tate noted that staff is recommending that the City pursue a single insurance that the City would provide. He understood that there are some non profit organizations that have to provide their own insurance. He inquired whether this was still an option.

Ms. Spier indicated that at the last Council meeting, staff was directed to look at two agencies that could possibly fund the facility as an insurance holder. City staff is filling out the application so that the facility becomes its own insurance holder. Currently, staff is processing the event where the end user/group would have to provide additional insurance through the City's company or their own homeowners insurance. Since the last Council meeting, staff is receiving kick back from insurance companies who are not willing to include the primary non contributing language in homeowners' insurance policies. Therefore, three private users had to come back because their homeowners insurance company refused to add this language. She said that the Council may wish to seek City Attorney advice as to the risk the City would take if the City omits this language.

Council Member Tate stated that there are organizations that already have their own blanket insurance company for any events that they hold. To have them be required to get the City's offered insurance policy would require the non profit organization to pay a lot of extra money that they would not have to pay because the organization is already covered.

Ms. Spier said that the organization can go back to their insurance company and provide the City with the additional language.

Finance Director Dilles said that if a non profit already has its own insurance, the question is why they should be paying to buy into this other program that the City might get. He said that if the City is able to find a blanket liability policy that covers the entire facility and any activities taking place, the City has to find a way to cover these costs. He said that staff discussed spreading this cost across all the users and that the fees would recover these costs. He felt that it could be possible to have a two step fee but that some of Ms. Spier's recommendations are along the line of simplifying the process and not have a lot of extra fees. He recommended that a packet be put together that includes insurance and that the non profit organizations would not be buying insurance, per sea, as the City would already have in place for events. On the other hand, if the City is not able to secure one of the blanket liability policies, the City would be back with buying individual policies and that the non profit agency would not be required to purchase additional insurance. He informed the Council that ABAG is stating that the City's insurance may not be insurance.

City Attorney Leichter informed the City Council that one of the reasons that the City has primary non contributing requirements is because if there is an accident, the person injured will sue both the party and the City. A court may find that both have joined in several liabilities. She said that the primary non

contributing language states that the insurance of the party holder pays first and that the City will not contribute if it is a joint and several liabilities. This puts the City's insurance in a position where they take a back seat during litigation and that the other insurance litigates the matter. On the issue that Council Member Tate raised, she did not care where the insurance comes from. If a non profit has sufficient assets to sign the indemnification clause and has sufficient insurance to meet the City's requirements, this would be acceptable if they add the City as an additional insured. She said that she and the Finance Director need to discuss whether non profits should be allowed to choose between providing their own insurance and coming under the City's umbrella policy.

Mayor Kennedy noted that many homeowners' policies do not contain the primary non contributing language as this is a unique and special requirement.

Recreation Supervisor Boss indicated that the City has had three separate insurance companies tell the City that they could not provide the City primary non contributing language. It was her understanding, in speaking with several insurance companies that they all have to file with the State of California their insurance policies. They do not have the right legally to change language in a policy. She stated that staff spends numerous hours dealing with this issue on every rental that requires insurance and that the City has yet to receive from the user group what staff has requested in terms of insurance. She said that staff has made exceptions at the last minute, receiving insurance information but that it has not met with the criteria specified on City forms.

City Manager Tewes stated that insurance requirements make it difficult to rent the Community and Cultural Center. If it is the goal of the City to maximize the use of the facility, he stated that he is willing to accept more risk but understood why the Council many not want to.

Mayor Kennedy stated that he is willing to accept more risk. He stated that it was his understanding that the City was having difficulty getting someone to provide insurance.

Mayor Pro Tempore Chang said that it was her recollection that the Council was pursuing a blanket umbrella liability insurance of some sort.

Mr. Dilles said that staff is still pursuing a blanket umbrella liability insurance, indicating that he is pursuing two leads to obtain quotes on insurance costs to see it is affordable.

Mayor Pro Tempore Chang inquired whether it would be possible to receive both quotes and the different quotes that staff has in a month's time. The Council can review the insurance proposals/quotes and make a selection.

Council Member Sellers said that he was comfortable with an increased risk, noting that the City may have other options as well. He felt that by the time the Council gets to the public hearing there will be resolutions to this issue.

Mayor Pro Tempore Chang said that she supported a hassle free application packet. She inquired whether the City's package eliminates some of the hassle factors and is becoming hassle free.

Ms. Spier said that the City's package would eliminate some of the hassle factors (e.g., security issue) but that it does not address the insurance issue. She indicated that she is proposing an event coordinator assistance program in order to provide end users with a one stop shop.

Council Member Carr stated that it was his hope that the Council realizes that it needs to accommodate a wide range of needs and understands the different issues that may come up. He indicated that he has concerns regarding the new operating hours and staff's concerns about them. He is not suggesting that they be changed at this time but that six months from now, the Council may want to revisit the hours of operation. He appreciated the changes proposed with the kitchen use. He said that he too is willing to accept a greater range of risk when it comes to liability to accept those acceptable risks and allowing the City to become the judging factor versus some other body.

City Manager Tewes requested that the Council express some views about accepting more risks and how it would like to proceed on the insurance issue. One approach would be to allow insurances to not include the specified language. An alternative recommendation is to require the specified language through the insurance that is provided by individuals through the homeowners insurance or separate insurance.

Action: *It was the consensus of the majority of the City Council that it is willing to accept a higher level of risks and be willing to accept insurance policies without primary none contributing clauses. The Council is also willing to accept other insurance modifications, as necessary, to the City's standard policy in order to accept more risk. These are to be reviewed on a case by case basis until staff obtains the quotes from the two insurance companies.*

Action: *It was also the consensus of the City Council to **Direct** staff to schedule a public hearing for late June to review changes to the current rental rates.*

Redevelopment Agency Action

OTHER BUSINESS:

13. DRAFT ECONOMIC DEVELOPMENT STRATEGY

Director of Business Assistance and Housing Services Toy presented the staff report and highlighted out some of the revisions to the draft Economic Development Strategy.

Agency Member Carr stated that the Economic Development Subcommittee wanted to present the information as soon as possible to the Council and have some time later on to discuss the draft strategy. He noted that there are other groups in the community who would like to review the draft strategy as well.

Action: *On a motion by Agency Member Sellers and seconded by Agency Member Carr, the Agency Board unanimously (5-0) **Directed** staff to circulate the Economic Development Study for comments, and **Scheduled** the Study for discussion on May 7, 2003.*

City Council Action

OTHER BUSINESS:

Action: *It was the consensus of the City Council **to consider** item agenda 15 at this time.*

15. COMMUNITY INDOOR RECREATION CENTER REVIEW OF PROGRAMMING SPACES, BUDGET, AND PROJECT SCHEDULE

Deputy Director of Public Works Struve presented the staff report. He requested that the Council appoint a Council subcommittee to work with staff on the items addressed and to appoint a committee chair for the subcommittee. He said that staff would like to turn around recommendations within 60 days.

Council Member Sellers recommended that the Council provide preliminary thoughts this evening and that a Council subcommittee be appointed. The subcommittee is to work through the issues, returning to the Council as decisions need to be made.

Mayor Kennedy felt that the identified schedule was too long. He suggested that the subcommittee look at comparable time schedules for other similar projects to obtain realistic ideas of comparable schedules. He said that the City is finding with the aquatics center that the cost of Leeds is extensive. He agreed that a gold Leeds standards would be too high. He suggested that the subcommittee take a look at this as well to see what the City can do to meet the intent without having extremely high costs. He indicated that he has received requests from Council Members Sellers and Tate and Mayor Pro Tempore Chang to serve on the subcommittee. In reviewing an updated list of Council committee assignments, he noted that Council Member Tate has a heavy work load in terms of committee assignments. He recommended that the Council appoint Mayor Pro Tempore Chang and Council Member Sellers to this subcommittee to balance out the committee assignments. He said that it is his personal policy to give the Mayor Pro Tempore the opportunity to serve on committees as first choice.

Council Member Sellers said that early in the process, it got derailed because Mayor Pro Tempore Chang recommended that the indoor recreation center be located in a different part of town and go in a different direction. He inquired whether Mayor Pro Tempore Chang was comfortable with the direction that it is now going and that the Council is on track. He noted that there was Council discussion about moving the indoor recreation center to Condit Road and wanted to confirm that this was no longer being entertained.

Mayor Pro Tempore Chang felt that the Council was on track. She said that her concern at the time was attributed to the architect. She stated that she was assured by Council members that the architect

selected was the right one for the project, including architect Chuck David. She said that she offered a suggestion to locate the indoor center on Condit Road for the Council to resolve the problem with the aquatics center. She felt that the issue has been resolved.

Council Member Carr stated that he was not opposed to the recommended appointment. He supported the project and moving forward with it. He wants the Council to make sure that it has looked at all of the needs and all of the opportunities within the community, including the needs of the School District with their facilities as circumstances of the School District changes. When the master plan was put together, there was a review of existing facilities and that existing school sites were catalogued. At the time, the City did not know what Sobrato services were going to be. Also, the Council did not take into account the community asset that Britton Middle School was. He said that in approximately 18 months, Britton Middle School will be at least 1/3% smaller as it is today student-wise as the ninth graders move into the high school. He indicated that the School District has made it known that they can no longer afford to maintain the pool and that they will be looking at all of their facilities as these types of moves are made. He would hate for the City to miss an opportunity in having a discussion about these issues. He did not know if this would affect the discussion of the indoor recreation center and how the City moves forward with it or moving forward with any of the City's Visioning projects. He felt that it would be worth taking a little bit of time out of the schedule to take a look at the City's master plan and how the situation that the community is in today. He felt that there may be some things that could be updated in the master plan. He indicated that the YMCA attended a City-School Liaison Committee meeting to talk about the pool because the School District had an energy report completed that shows that they cannot afford to keep the pool open much longer. The School District committed to keeping the pool open this summer as the YMCA already has its aquatics program planned for this summer. The District made it clear that they would not be able to install the upgrades that the pool needs or to pay to keep it open beyond this summer. He felt that the City may have opportunities to partner with the School District.

Council Member Tate stated that he volunteered to serve on this subcommittee because he has a strong opinion, feeling, and commitment that he made when he first ran for the Council office to both the youth and seniors of the community. He was really disappointed in the schedule. He understood that the Council made the aquatics complex the number one priority, noting that City would not be able to open the indoor recreation until the end of 2006. He requested that the subcommittee take a hard look at the schedule and that the center be opened earlier.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Ratified** the Mayor's appointment of Council Member Sellers and Mayor Pro Tempore Chang to the Council Subcommittee to work with staff and report back to Council.*

Mayor Kennedy felt that it was time that the Council stayed on track and get things done. He agreed that the schedule was too long. If the Council goes back and revisits the basis for the indoor recreation center, this would slow down the development even further. He stated that he would not want to slow down the committee to go back and revisit the matter one more time.

Council Member Carr indicated that it was not his intent to slow the process down. However, it was his belief that circumstances are different then they were when this project was first thought of, when the site was first decided, and when the Council came to the conclusion that it should be an inter generational site.

Mayor Kennedy said that if there is a way to do this in parallel and that the Council tasks the Parks and Recreation to review the master plan as the City moves forward and work on the programming. He noted that programming is the part that assesses what will be included in the center. He felt that there may be a way to do both.

Action: *On a motion by Council Member Carr and seconded by Mayor Pro Tempore Chang, the City Council unanimously (5-0) **agreed** to extend the length of the meeting beyond the scheduled curfew.*

14. REVIEW RECOMMENDATIONS OF THE VALLEY TRANSPORTATION AUTHORITY'S (VTA) AD HOC FINANCIAL STABILITY COMMITTEE

Mayor Kennedy indicated that he has prepared written reports that will be presented to the VTA Board of Directors this Friday that address the culmination of cuts in services, increased revenues and possible new sources of revenues. He stated that he would provide the Council a packet of information that contains all of the recommendations.

Action: *No action taken.*

17. WITHDRAWAL OF APPLICATION TO CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC) FOR MADRONE PARKWAY AT-GRADE CROSSING

Deputy Director of Public Works Bjorke presented the staff report and stated that it was clear to staff that the City's best chances of reconciling its differences with Union Pacific and the Public Utilities Commission would be to withdraw the City's application and restudy some of the issues that they have brought forward in the areas of traffic, impacts with the railroad, and the future increase in commuter rail traffic through the southern Santa Clara county. Staff recommends that the City withdraw the application before entering the hearing process and that staff would return to the Council with a plan on how the City might address this issue.

Mayor Kennedy said that it was clear to him that there was no way that the Public Utilities Commission or Union Pacific was going to approve the additional at grade railroad crossing as they are closing down at grade crossings.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Directed** Staff to Withdraw the Current Application to CPUC for Madrone Parkway At-Grade Rail Crossing.*

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City*

*Council unanimously (5-0) **Directed** Staff to Return to Council with a Plan for Addressing the Issues Raised by CPUC and Union Pacific Railroad (UPRR) Prior to Submittal of New Application.*

18. CONSIDERATION OF BECOMING A GREEN CITY

Assistant to the City Manager Eulo suggested that this item be delayed to May 7 or another date as there is nothing urgent about this item.

Action: *On a motion by Mayor Pro Tempore Chang and seconded by Council Member Carr, the City Council **Continued** this item to May 7, 2003.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURNMENT

There being no further business, Chairperson/Mayor Kennedy adjourned the meeting at 11:20 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, AGENCY SECRETARY/CITY CLERK